



Legislative  
Research  
Council

# MINUTES

## State-Tribal Relations Committee

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**Senator Troy Heinert, Chair**  
**Representative Shawn Bordeaux, Vice Chair**

**Third Meeting**  
**2015 Interim**

**Room 413, State Capitol**  
**Pierre, South Dakota**

**Monday, October 26, 2015**

The third meeting of the State-Tribal Relations Committee for the 2015 interim was called to order by **Senator Troy Heinert**, at 10:00 a.m. in room 413 of the State Capitol in Pierre.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford, Troy Heinert, Betty Olson, and Craig Tieszen; and Representatives Shawn Bordeaux, and Jim Schaefer. Excused: Senator Ernie Otten; Representatives Kevin Killer, Elizabeth May, and Lee Qualm.

Staff members present were Amanda Jacobs, Research Analyst; Stephanie Gruba, Fiscal Analyst; and Cindy Tryon, Senior Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC).*

An opening prayer was offered by Representative Shawn Bordeaux.

### Approval of Minutes

A MOTION WAS MADE BY SENATOR TIESZEN, SECONDED BY REPRESENTATIVE BORDEAUX, THAT THE MINUTES OF THE JULY 8, 2015, MEETING BE APPROVED. The motion prevailed on a voice vote.

### Remarks from the Chair

Senator Heinert welcomed Representative Jim Schaefer to the committee. Representative Schaefer was appointed to the committee replacing Representative Steve Hickey who resigned his seat in the House of Representatives earlier this year.

### Wakpa Sica Center Update

Senator Heinert said that Senator Rounds' office is currently searching for federal funding that could help the Wakpa Sica Center meet the needs of the tribes. With the late Chairman Jandreau, Lower Brule Sioux Tribe, heading up the group developing the center, it was built on tribal trust land using federal dollars, but when the funding ended, the building could no longer be sustained.

The Cheyenne River Sioux Tribe has agreed to take the lead regarding upkeep and care of the center for now. The Great Plains Tribal Chairman's Association is discussing possible uses for the center should a funding source be found.

Representative Bordeaux suggested that Secretary Emery talk to the Tribal Chairs regarding this project. Representative Bordeaux said that there could be tourism opportunities for all the tribes based out of the center.

Senator Jim Bradford said that perhaps the Department of Tribal Relations could have their offices within the center.

### **Department of Tribal Relations Update**

**Mr. Steve Emery, Secretary, Department of Tribal Relations**, gave an update on the various ongoing projects of the department. Mr. Emery said that the Great Plains Tribal Chairman's Association will be meeting in Rapid City later this week and he will talk to them about the Wakpa Sica Center as requested by this committee.

A new project the Department started recently is informational meetings for the tribes regarding how the legislative process works. They have conducted one meeting already and had good attendance. A second meeting was requested and they will be hosting that in December.

In response to a question from Representative Bordeaux, Mr. Emery explained that to have DOT assist with signs at the Lakota cemetery in Mellette County, the tribe needs to submit a formal letter to DOT making that request.

Senator Bradford said that he has been asked to sponsor a bill that would send the fees paid for the decals for veterans' license plates back to the county veterans' offices. Senator Bradford would like the LRC staff to draft that bill. Mr. Emery said that he knew that request was going to be made and that the fee for each decal is \$10.

**Senator Betty Olson** asked about the signage for the creek in her district that was named Squaw Creek and the name has been changed to Slim Buttes Creek. Senator Olson said that she had asked Secretary Emery to look into getting new signage for that creek at a previous meeting but said that no new signage has yet been installed. Mr. Emery said that he will look into that signage and report back to Senator Olson.

**Senator Craig Tieszen** reported on the pilot parole project that was established through the Public Safety Improvement Act and is being conducted on the Sisseton-Wahpeton reservation. Senator Tieszen said the pilot program is going very well and allows tribal members on parole to move back to the reservation to serve out their time on parole there. Mr. Emery said that during the pilot project, only one parolee has gone back to prison. They are in the process of setting up the same type of program on the Rosebud reservation. Mr. Emery added that this is no longer considered a project but is now considered a parole system.

### **Committee Discussion**

Senator Heinert opened the meeting to committee discussion.

Senator Bradford said that Representative May had attended the tour of the new marijuana business owned by the Flandreau Santee Sioux Tribe. Representative May had told Senator Bradford that the turnout of legislators was poor, but that it was a very interesting tour. According to Representative May, more legislators need to visit the business before making any judgments about it.

Representative Bordeaux said that South Dakota needs to look at Flandreau's marijuana business the same way we look at other states' marijuana laws. The state needs to figure out how to work with the

tribe rather than fighting with them. If this business has the same success as other states have had, then the Flandreau tribe will profit and other tribes may consider this as an economic development opportunity.

Senator Tieszen said that he agrees with Representative May in that the Legislators need to educate themselves on this project. Senator Tieszen added that this business is a pure nightmare when it comes to law enforcement, and the state and tribe need to try to work their way through this situation.

Senator Bradford said that the tribes are trying to find ways to support themselves and be sovereign nations. Senator Bradford commented that the federal government will most likely be the Flandreau tribe's biggest hindrance when it comes to the business.

Senator Heinert said that he agrees with Senator Tieszen in that this new business venture undertaken by the Flandreau Santee Sioux Tribe will be a jurisdictional and statutory nightmare.

### **Office of the Attorney General Update**

**Mr. Charlie McGuigan and Ms. Kirsten Jasper, SD Attorney General's Office**, answered questions from the committee regarding the marijuana business venture underway by the Flandreau Santee Sioux Tribe. Ms. Jasper reported that it is the state's position that marijuana is illegal under both state and federal law. The state will watch for any related incidences that occur off the reservation. They expect increased criminal incidences because of the use of marijuana. Ms. Jasper explained that there is an ingestion law in South Dakota which says that if there is any THC in the blood system, the offender is, by law, in possession of marijuana. Ms. Jasper said that it is her understanding that South Dakota is the only state with this ingestion law in statute. Mr. McGuigan said that South Dakota does have a misdemeanor offense for possession of marijuana based on the amount the offender possesses.

Senator Olson asked if the federal government has jurisdiction over the tribal land and would they be prosecuting marijuana users on the Flandreau Santee Sioux Reservation. Ms. Jasper said that the federal government has jurisdiction over tribal members on the reservation, but that she does not know what the federal government has planned for this situation.

Representative Bordeaux said that the federal government sent a document to the tribe saying that the government will not prosecute cases regarding marijuana, treating these situations the same as they do in states that have legalized marijuana.

In response to a question from Senator Tieszen, Mr. McGuigan explained how jurisdictions are applied on tribal land. The state has jurisdiction over non-Indian crimes on the reservation unless the victim is an Indian. Marijuana use is considered a victimless crime, so the state would have jurisdiction over non-Indian use of marijuana.

Senator Tieszen asked if the Attorney General's office has talked to the Flandreau tribe regarding this new business. Ms. Jasper said that the Attorney General has talked to the Tribal Chairman but is unaware of the extent of that conversation. Mr. McGuigan said that a couple of meetings were scheduled but they were postponed.

Senator Heinert asked if there is mandatory minimum sentencing in South Dakota. Mr. McGuigan explained that there is very limited mandatory minimum sentencing and those crimes include sex crimes involving small children, drug sales in a drug free zone, and committing a crime with the use of a firearm.

There were some questions regarding the Gear Up program, but Mr. McGuigan said there is a criminal investigation and that's the only comment he can make on that issue.

Senator Heinert thanked Mr. McGuigan and Ms. Jasper for taking the time to talk to the committee about these issues. He asked that the Attorney General's Office do a thorough investigation of the Gear Up program and report back to the legislature, pointing out that many communities are very concerned about these types of issues being swept under the rug.

### **Committee Discussion**

**Mr. Ryan Kills-A-Hundred, Council Member/Treasurer, and Mr. Kenneth Weston, Council Trustee, Flandreau Santee Sioux Tribe**, talked about the marijuana production business that the tribe has built. Mr. Kills-A-Hundred said that the tribe extensively researched the business of production and sale of marijuana and did not come to their decision lightly. The tribe has worked with the federal government which gave the tribe eight rules they have to follow and in doing so the federal government agrees to not interfere in their marijuana business.

Mr. Kills-A-Hundred explained that when the Grand Falls casino was built in Iowa, the casino in Flandreau had a loss of 40% of their profits. This meant that the tribe had to find another income source in order to be self-sufficient.

In response to questions regarding how the sale of marijuana will actually be handled, Mr. Weston explained that the marijuana is placed in a container that is labeled with a bar code. The marijuana has to be used on site and cannot leave the premises. The tribe is working with consultants on how to best make this process work. Mr. Kills-A-Hundred said that the facility where the marijuana is purchased and used will have a lounge atmosphere and that the reports of a resort being built are incorrect. In the casino, the tribe protects its customers and keeps them safe and will continue to do so at the new facility. Using the bar code, every ounce of marijuana sold will be tracked and cannot leave the facility, so that it does not fall into the hands of minors. The production, sale and use of marijuana on the Flandreau Santee Sioux reservation is only legal at this facility and cannot be legally grown or used anywhere else on tribal land.

Senator Heinert thanked the gentlemen for attending today's meeting and pointed out that there will most likely be discussion during the 2016 Legislative Session regarding this new business.

### **Committee Discussion**

Senator Heinert distributed copies of Governor Mickelson's Reconciliation Proclamation proclaiming 1990 as the year of reconciliation. Senator Heinert said that it has been 25 years since this proclamation was issued and very little has changed. Senator Heinert suggested the committee request Governor Dugaard appoint a Reconciliation Commission to address how we move forward the topic of healing and working together.

Representative Bordeaux said that he would like a Truth and Reconciliation Commission established similar to organizations found in other countries, much like Representative Hickey had discussed at an earlier committee meeting. Representative Bordeaux said that we have learned today that the best way to get through anything is to sit down at the table and discuss the issues, not act out. We want to talk about how we can make things better.

Senator Bradford commented that the incident that occurred in Rapid City, when Native American students had beer spilled on them, could have been brought to such a Commission and studied as to what happened and why it happened.

Representative Schaefer said that relationships between the Native Americans and the non-Natives improve when everyone works together, and he believes a Reconciliation Commission would be a positive step.

Senator Olson asked if this proposed commission would cost taxpayer dollars. Representative Bordeaux said that it would cost some money to hold meetings.

A MOTION WAS MADE BY REPRESENTATIVE BORDEAUX, SECONDED BY SENATOR BRADFORD TO SEND A LETTER TO THE GOVERNOR REQUESTING THAT A TRUTH AND RECONCILIATION COMMISSION BE ESTABLISHED FOR THE PURPOSE OF STUDYING RACE RELATIONS AND MAKING RECOMMENDATIONS FOR IMPROVING THOSE RELATIONS IN THE **SPIRIT OF GOVERNOR MICKELSON'S 1990 PROCLAMATION OF RECONCILIATION**. The motion prevailed on a roll call vote with 5 voting AYE, 1 voting NAY, and 4 EXCUSED. Those voting AYE: Bradford, Schaefer, Tieszen, Bordeaux, and Heinert. Those voting NAY: Olson. Those EXCUSED: Killer, May, Otten, and Qualm.

Senator Olson said that the only reason she voted against the motion is because the taxpayers will have to fund the Commission.

Senator Heinert said that by sending this letter of request to the Governor the committee's intent is not to wash its hands of the work but rather to work with the Commission. Senator Heinert said that the LRC staff will draft the letter and the committee members will have an opportunity to read it and make suggestions prior to it being sent to the Governor.

Senator Heinert asked for the committee members' input on scheduling a meeting during the Lakota Nation Invitational (LNI) in Rapid City the third week of December.

Senator Bradford said that he would prefer a meeting at Flandreau prior to the start of the 2016 Legislative Session. Senator Tieszen agreed that a meeting at Flandreau would be good, but if a formal invitation came from LNI requesting the committee meet during that event, the committee should accept that invitation for the December meeting, and try to meet at Flandreau during the 2016 interim.

### **Department of Education Update**

**Mr. Mato Standing High, Director, Office of Indian Education**, introduced himself. Mr. Standing High became the Director of the Office of Indian Education on June 1 and works out of Rapid City. In addition to his work with the Department of Education, Mr. Standing High is an attorney and has a small law practice/consulting firm.

Mr. Standing High talked to the committee about the Native American Achievement Advisory Council. *"On Feb. 2, 2015, Gov. Dennis Daugaard issued Executive Order 2015-02 calling for the establishment of the Native American Student Achievement Advisory Council. This order came as a result of a request by the Great Plains Tribal Chairman's Association. Council members will be looking to identify successful strategies to change the current learning paradigm for Native American students in South Dakota."*

Mr. Standing High said that the advisory council is looking at factors that impact the achievements of Native American students. As a state, we need to look at the statistics regarding these students and learn how to serve them just as we would serve any other citizen in need of assistance. The advisory council has agreed on three areas to address: taking a look at innovative schools or alternative means of education; providing more education about the culture and history of the Native Americans in our

state; and finding ways that encourage and incentivize growing and keeping teachers. When you hear about a student's success, you usually hear about a teacher.

Representative Bordeaux said that he serves on the advisory council and the group has visited schools in Denver and a school in Sioux Falls to see first-hand what some non-traditional schools are doing. The schools they visited are nothing like the schools our students attend today; it is time to try something totally different. It is vital that we find a way to convince other legislators that we need to make these other types of schools happen.

Mr. Standing High said that the data is there proving that the Native American students are not doing well and it is time to do something different. With open minds and open hearts, people will realize that what we are doing is not working and it is time for change. We need to insure that these children have a quality education: kids should have fun, learn, and be engaged with their peers. Mr. Standing High added that there is a fine line between what we can have in school and we can't provide in school, but telling a child that they are cared for does not cost anything.

#### Future Meeting Dates

A request for a fourth meeting will be submitted to the Executive Board. If that request is approved, a final meeting for this interim will be held the third week of December in Rapid City during the Lakota Nation Invitational.

#### Adjournment

**SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE SCHAEFER, THAT THE STATE-TRIBAL RELATIONS COMMITTEE BE ADJOURNED. The motion prevailed on a voice vote.**

The committee adjourned at 2:50 p.m.

*This meeting was held in a physically accessible location. Any individual needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605-773-3251) in advance of the meetings to make further arrangements.*

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